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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1159 and 76-1416

ARTHUR F. QUERN, Director of the Illinois Department of Public Aid, et al.,

Petitioners,

vs.

VENUS MANDLEY, et al.,

Respondents.

JOSEPH A. CALIFANO, JR., Secretary of Health, Education and Welfare,

Petitioner,

vs.

VENUS MANDLEY, et al.,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE STATE PETITIONERS

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REPLY BRIEF FOR THE STATE PETITIONERS

ARGUMENT

I.

THE STATE OF ILLINOIS MAY LAWFULLY PROVIDE FOR THE SPECIAL AND EMERGENCY NEEDS OF AFDC RECIPIENTS WITHIN THE MEANING OF 42 U.S.C. 606(b) AS FUNDED VIA 42 U.S.C. § 603(a)(1).

Respondents attempt to paint a sinister picture of Illinois' actions in this case, in which the State, with HEW's blessing, "devised" a method to avoid the Seventh Circuit's decision in *Mandley I* (br., 31). On the contrary, the State merely invoked a pre-existing option clearly authorized by federal law.

Under the AFDC program, the State has always had essentially unfettered discretion to determine its standard of need and to choose those items which will be considered in setting that standard. Both emergency and non-emergency needs may be included within that standard, as has long been recognized by HEW. *See,* e.g., 45 C.F.R. § 233.20 (a)(2)(v); Department of Health, Education, and Welfare, *Handbook of Public Assistance Administration, Part IV,* Section 3131(3) (February 23, 1966). While respondents contend that most State special needs programs deal with dietary needs, transportation needs, etc., there is nothing in either the Social Security Act or its legislative history which demonstrates a Congressional intent to exclude emergency need items from a state's standard of need.

Respondents maintain that Congress, in enacting § 406 (e), did not authorize alternative provisions for emergency assistance (br., 35). Clearly, such authorization is not needed, for the States always have been authorized to

include special and emergency need items within their AFDC plans. Alternately, respondents argue that any authorization for the meeting of special needs through the § 406(b) AFDC plan was superseded by enactment of the § 406(e) emergency assistance program. However, since § 406(e) was designed to provide benefits to children not eligible for AFDC, there is no reason why the statute would have superseded a valid component of the AFDC program, a related *yet separate* program. Further, the Supreme Court has indicated that it will not lightly presume that Congress intended to preempt existing legislation. In refuting an argument that Congressional enactment of the Work Incentive Program preempted New York work rules, the Supreme Court stated in *New York State Department of Social Services* v. *Dublino,* 413 U.S. 405,413, 37 L. Ed. 2d 688 (1973) that:

> It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is clear manifestation of intention to do so.

There is no manifestation in either § 406(e) or its legislative history that Congress intended to rescind its previous authorization allowing states to provide for the special needs of AFDC recipients under § 406(b).

Respondents recognize that clear and significant distinctions exist between the § 406(e) program and the program for special needs authorized under § 406(b). In view of this concession, it is difficult to understand their characterization of the Illinois program as a "subterfuge" (br., 48). Rather, the Illinois special assistance program created pursuant to § 406(b) and funded via 403(a)(1) was clearly authorized and should be upheld.

II.

THE STATE OF ILLINOIS MAY MAINTAIN AN EMERGENCY ASSISTANCE PROGRAM UNDER 42 U.S.C. § 606(e) WHICH DOES NOT PROVIDE RELIEF FROM ALL TYPES OF DESTITUTION AND FOR ALL NEEDY FAMILIES WITH CHILDREN.

In the main, respondents' position is based on *King* v. *Smith*, 392 U.S. 309, 20 L. Ed. 2d 1118 (1968); *Townsend* v. *Swank*, 404 U.S. 282, 30 L. Ed. 2d 448 (1971), and their successor cases which concerned State AFDC programs. Those cases held that once a federal eligibility standard is established, states must pay AFDC benefits to all eligible persons absent a showing that those persons were not covered or that such coverage was optional with the states. However, the holdings were grounded on § 402 (a)(10) which requires that ". . . *aid to families with dependent children* shall be furnished . . . to all eligible individuals." 42 U.S.C. § 602(a)(10) (emphasis added). However, since the instant case concerned the emergency assistance program, a program related to yet separate from AFDC, the language of § 402(a)(10) demonstrates that both that subsection and the *King* line of cases are inapplicable. *See Williams* v. *Wohlgemuth*, 540 F. 2d 163 (3d Cir. 1976).

Respondents argue that notwithstanding the clear wording of § 402(a)(10), Congress nonetheless impliedly intended that the subsection would also govern the § 406(e) emergency assistance program. According to respondents, the language of § 402 was not amended to specifically include emergency assistance because the § 406(e) program was optional. Thus, once a state opted to participate, § 402(a)(10) would control any § 406(e) plan. Respondents' contention might carry weight if all subsections in

§ 402(a) pertained merely to "aid to families with dependent children." However, a number of subsections are much broader in scope than § 402(a)(10). *See*, e.g., 42 U.S.C. § 602(a)(1), (2), (3) and (5). Furthermore, in 1968, the year in which the § 406(e) program was established, Congress amended § 402(a) in fifteen separate places. *See* 42 U.S.C.A. § 602, *Legislative History*. Since § 402(a)(10) was not amended to include the emergency assistance program within its scope, it is clear that Congress did not intend that subsection to govern a State's emergency assistance program.

45 C.F.R. § 233.10(a)(1)(i) and (ii), relied on by both respondents and the court of appeals, provides no support for their position. That section, the so-called "Townsend regulation," was designed to effectuate the Supreme Court's decisions in *King* and *Townsend* — decisions which did not pertain to the emergency assistance program. Moreover, the clear purpose of that section is to prohibit states from defining eligibility more narrowly than is provided by the Act. However, respondents erroneously contend that the language of § 406(e) sets forth a definition of eligibility for emergency assistance.

At page 19 of their brief, respondents paraphrase the alleged eligibility requirements of § 406(e). However, in deviating from the wording of § 406(e), respondents distort the meaning and purpose of the statute. The essential wording shows that emergency assistance may be provided, *"but only where"* the child is without available resources, the assistance is necessary to avoid destitution or provide living arrangements, and the need did not arise from a refusal to accept work or work training.[1] 42 U.S.C.

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1. The "but only where" language is conspicuously absent from respondents' alleged eligibility definition.

§ 606(e)(1) (emphasis added). This language is critical, for it demonstrates that Congress envisioned the above provisions as placing a limitation on the scope of emergency assistance programs designed by the States, and not as establishing a standard of eligibility. Thus, Congress did not intend that a State which opts into the § 406(e) program must provide emergency assistance to anyone who could fit within the broad perameters of the statutory language.

This conclusion is further supported by the presence of the term "necessary to avoid destitution." Readily apparent is the broad scope of that phrase. Congress did not define that term in the statute, and its failure to do so supports petitioners' view that the term was not meant to establish a standard of eligibility.[2] Rather, the term was left undefined in order to give each state leeway in providing its own interpretation for purposes of the emergency assistance program.

Nothing in the legislative history of § 406(e) reveals that states were required to provide assistance to cover the entire gamut of emergencies for all needy persons. On the contrary, the history demonstrates that Congress created a program which would give participating states flexibility in dealing with emergency situations. S. Rep. 744, 90th Cong. 1st Sess., (1967) U.S. Code Cong. & Adm. News, v. 2, p. 3002-03.

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2. As the court of appeals was forced to concede, it was unable to define the term "necessary to avoid destitution" (A. 43). It is indeed puzzling that the court, without defining that alleged eligibility requirement, could somehow find that the Illinois program was inconsistent with § 406(e).

The court of appeals decision, by requiring states to cover all emergency needs of all needy people, creates severe problems for Illinois and other states. Respondents suggest at pages 26-27 that such is not the case, but their reasoning is faulty. Respondents' suggestion that Illinois need not participate in the emergency assistance program, while technically correct, is unhelpful. Illinois recognizes the problems of AFDC recipients suddenly faced with emergency needs, and respondents' suggestion does nothing to solve those problems.

Second, respondents suggest that Illinois, in operating a pre-1973 program "which nearly met the eligibility standard" (br. 27), spent only 0.14 percent of its budget on emergency assistance. However, as respondents noted in their statement of facts (p. 3) the pre-1973 program essentially covered only AFDC recipients. Thus, if previous funding levels were maintained, an extension of an emergency assistance program to cover persons not eligible for AFDC would drastically increase the budget.

Finally, respondents argue, based on Illinois population and the 1972 projected federal cost of the program, that Illinois would receive twice as much federal funding as it spent in 1972, prior to the restriction in the scope of the program. As previously noted, however, the 1972 Illinois program was much more restrictive than the program envisioned by the court of appeals. Moreover, respondents erroneously compute the federal share to all states as $70 million. In actuality, the federal share would be only half that amount. In addition, respondents erroneously assume that since Illinois has five percent of the nation's population, it would receive five percent of available federal funds. However, because "standards of need" vary from state to state, the amount paid to each state will

not bear a proportional relationship to the state's population percentage. Thus, notwithstanding respondents' assertions to the contrary, the court of appeals' erroneous interpretation of § 406(e) has placed Illinois in a very real dilemma.

III.

THE ORDER APPROVED IN *MANDLEY II* SHOULD NOT BE AFFIRMED ON THE BASIS OF THE EQUAL PROTECTION CLAIM RAISED BY RESPONDENTS.

Respondents urge that the order entered at the express direction of the seventh circuit in *Mandley II* can be sustained on equal protection grounds. Essentially, that order effectuated the court of appeals' *Mandley I* decision respecting the scope of § 406(e) programs. Respondents note that while the equal protection issue was decided adversely to them by the district court, the issue was not decided by the seventh circuit in *Mandley I*.

However, as previously noted, after *Mandley I* Illinois terminated its emergency assistance program under § 406 (e) and instead created a program to meet the special or emergency needs of AFDC recipients through the § 406(b) AFDC program, as funded via § 403(a)(1). Indeed, the central issue before this Court is whether Illinois can lawfully maintain this new plan as part of its AFDC program.

This Court has held that it will not decide issues not aired in the lower courts. *Burns* v. *Alcala*, 420 U.S. 575, 587, 43 L. Ed. 2d 469, 478 (1975). Furthermore, it is well settled that this Court will not resolve constitutional questions where such resolution is unnecessary to the final disposition of the cause. *See Youakim* v. *Miller*, 425 U.S. 231,

236, 47 L. Ed. 2d 701, 706-07 (1976). Should the Court uphold petitioner's position respecting the validity of the Illinois special assistance program established under § 406(b), there is simply no need to consider respondent's constitutional argument respecting Illinois' terminated § 406(e) emergency assistance program. Furthermore, since respondents did not raise a constitutional challenge to the validity of Illinois' present program notwithstanding their opportunity to do so, their argument should not be viewed as a challenge to the Illinois "special assistance" program.

However, assuming for argument's sake that this Court desires to reach the equal protection challenge raised by respondents, it is respectfully submitted that their claim is without merit.

This Court has most recently reiterated the mode of analysis for equal protection challenges to state welfare legislation. In *Maher* v. *Roe*, —— U.S. ——, 53 L. Ed. 2d 484, 492 (1977) the Court stated:

> The basic framework of analysis of such a claim is well-settled:
>
> "We must decide, first, whether [state legislation] operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. . . . If not, the [legislative] scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination . . . ." San Antonio School District v. Rodriguez, 411 US 1, 17, 36 L Ed 2d 16, 93 S Ct 1278 (1973).

While respondents do not argue that they are members of an inherently suspect class, they contend that the welfare scheme impinges on a fundamental right, i.e., the right to life itself.

Illinois has never attempted to deprive respondents of their right to survive. Rather, Illinois, in previously operating an emergency assistance program under § 406(e), merely determined that emergency welfare payments should be made only in response to certain emergency situations. While it can be argued that payments to persons enmeshed in other emergencies would be beneficial, it cannot be argued that Illinois, in failing to make those payments, has impinged on anyone's right to survive.

Maher v. *Roe, supra,* is most instructive in this regard. In *Maher,* plaintiffs challenged on equal protection grounds a Connecticut welfare regulation which limited state funding for first trimester abortions to those abortions that were medically necessary. Plaintiffs contended that since Connecticut provided funds for childbirth but did not provide funding for non-therapeutic abortions, the regulation effectively violated each woman's right to have an abortion. In distinguishing prior abortion decisions, the Court found that in each case the states involved had imposed unduly burdensome restrictions on a woman's freedom to determine whether to terminate her pregnancy. —— U.S. ——, 53 L. Ed. 2d 484, 494. In contrast, while Connecticut made funding available for childbirth, its decision to not provide funding for abortions did not impose any obstacles blocking a woman's free choice respecting abortions. *Id.* at 494-95. Similarly, Illinois previously provided emergency assistance to meet only certain emergency needs. Its decision to not grant emergency assistance for other emergency situation in no way impinged on other persons. Thus, Illinois former emergency assistance program did not violate respondents' right to survive.

Though not articulated, respondents essentially maintain that they have a fundamental right to welfare benefits which was violated by the Illinois emergency assistance program. However, the Supreme Court has never found such a fundamental right to exist. *Dandridge* v. *Williams,* 397 U.S. 471, 25 L. Ed. 2d 491 (1970); *Jefferson* v. *Hackney,* 406 U.S. 535, 32 L. Ed. 2d 285 (1972); *Maher* v. *Roe,* —— U.S. ——, 53 L. Ed. 2d 484 (1977). Respondents attempt to distinguish *Dandridge* and *Jefferson* on the ground that those cases merely involved reductions of benefits as opposed to total deprivations of welfare payments. However, *Dandridge* and *Jefferson* are broad enough to cover the instant case. Indeed, while the Court noted in *Dandridge* that "[t]he administration of public welfare assistance . . . involves the most basic economic needs of impoverished human beings," the Court nonetheless held that it should apply the traditional equal protection standard in determining whether a state welfare scheme as consistent with the mandate of the fourteenth amendment. 397 U.S. 471, 502, 25 L. Ed. 2d 491, 502. This test should likewise be applied to the welfare scheme under challenge here. *See also Black* v. *Beame,* 550 F. 2d 815 (2d Cir. 1977).

The Illinois emergency assistance program established under § 406(e) was divided into four components:

1. The AFDC family is homeless (without shelter) as a result of damage to the building rendering it uninhabitable (example: fire, condemnation).
2. A court ordered eviction occurs for reasons other than the recipient's failure to pay rent.
3. The AFDC family is potentially homeless due to damage to a portion of the building.
4. The AFDC applicant, determined presumptively eligible for AFDC, is in emergent need of cloth-

> ing and/or household furnishings and equipment. (Emergent food and rent can also be authorized by disbursing order at the time the applicant is determined presumptively eligible as provided in this paragraph. Any amount thus authorized may not exceed the amount calculated as the applicant's first month's payment, and will be deducted from the applicant's first month's payment.)

Respondents do not argue that the program did not apply to all AFDC recipients. Respondents contend that the welfare scheme violated the equal protection clause because it authorized aid for AFDC recopients having certain emergency needs, yet did not provide aid for AFDC recipients who had other emergency needs.

The regular AFDC program created pursuant to § 406(b) provides aid for needy families with dependent children so that they might meet their normal living expenses, e.g., expenses for food, clothing, and shelter. However, when emergencies arise, the money provided by the regular program is often, if not always, insufficient to meet the exigent needs of AFDC recipients. Thus, the Illinois emergency assistance program under § 406(e) was designed to provide financial assistance to meet expenses which are not budgeted into a recipient's grant.

In this regard, the emergency assistance program covered a very wide range of common emergency situations. AFDC recipients forced to suddenly find new shelter due to condemnation of their premises or damage to their building caused by catastrophe could obtain emergency aid. Similarly, AFDC recipients evicted by court order could also obtain emergency relief.[3] Moreover, presumptively

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3. Not included are court-ordered evictions due to an AFDC recipient's failure to pay rent. However, rent money is computed into the recipient's regular grant. Since emergency needs are those for which no funds are normally provided, eviction for failure to pay rent does not fit within the category of emergencies.

AFDC-eligible persons in emergency need of clothing and household furnishings and equipment could obtain assistance under the former § 406(e) program. Thus, the program helped insure that both AFDC and potential AFDC recipient could secure basic necessities of life.

The types of possible emergency situations facing AFDC recipients are perhaps too numerous to count. Given Illinois' limited public aid resources, the State had to determine whether "to support some families adequately and others less adequately, or not to give sufficient support to any family." *Dandridge* v. *Williams*, 397 U.S. 471, 479, 25 L. Ed. 2d 491, 499 (1970). Because the State chose the former alternative, Illinois did not provide emergency assistance to meet all types of emergency needs Thus, not included in the program were those emergency needs which in general could not be verified or which, by inclusion, would cause the program to be subjected to abuse. However, since the Illinois emergency assistance program was designed to meet the bona fide emergency needs of AFDC recipients, the exclusion is rationally related to the purpose of the statute and is consistent with the State's desire to most productively use its finite welfare funds. Thus, the district court upheld the validity of the differential treatment accorded by the former Illinois program. While the Illinois program did not alleviate all emergency situations, Illinois was not required by the fourteenth amendment to "choose between attacking every aspect of a problem or not attacking the problem at all." Id. at 486-87, 25 L. Ed. 2d 491, 503 (1970).

Respondents cite *Jimenez* v. *Weinberger*, 417 U.S. 628, 41 L. Ed. 2d 363 (1974) for the proposition that Illinois could not provide emergency assistance benefits only to those verifiable emergency situations. The federal statute under attack in *Jimenez* severely restricted the ability of an illegitimate child to obtain benefits from a parent's disability insurance. Thus, *Jimenez* was concerned with an individuals eligibility to receive Social Security benefits. However, in the instant case, there was no question that all AFDC recipients were eligible to receive emergency assistance. The distinction which was created by the Illinois program did not deal with the question of eligibility for the program, but rather dealt wth the content of the program, i.e., which emergent needs would be covered.

Respondents also contend that there are less onerous methods of achieving the result which Illinois desires. However, so long as the classification made by a statute is rationally related to the statute's purpose, the fact that less severe alternatives might exist is irrelevant.

It should also be noted that while the Illinois' program did not provide aid in all emergency situations, other portions of the State's welfare scheme operated to assist a needy AFDC recipient. For example, since Illinois participates in the federal food stamp program, persons in emergency need of money for food could obtain food stamps in order to meet their need. Moreover, if an AFDC recipient's regular check was lost or stolen, he could obtain a replacement via the petitioners' Warrant Control Program. (Tr. 391-99). In light of petitioners' attempts to provide other mechanisms to aid respondents, petitioners emergency assistance program did not run afoul of the fourteenth amendment. *Macias* v. *Finch*, 324 F. Supp. 1252, 1260 (N.D. Cal. 1970) *aff'd sub nom. Macias* v. *Richardson*, 400 U.S. 913, 27 L. Ed. 2d 153 (1970).

It can be argued that Illinois' former emergency assistance program did not constitute the best approach to the problems facing needy persons in Illinois because the program did not cover all emergency need situations. In this regard, *Dandridge* v. *Williams*, 397 U.S. 471, 485, 487, 25 L. Ed. 2d 491, 501-02, 503 (1970) is particularly appropriate:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 US 61, 78, 55 L Ed 369, 377, 31 S Ct 337. "The problems of government are practical ones and may justify, if they do not require, rought accmmodations—illogical, it may be, and unscientific." Metropolis Theatre Co. v. City of Chicago, 228 US 61, 69-70, 57 L Ed 730, 734, 33 S Ct 441.
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> Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, Goldberg v. Kelly, 397 US 254, 25 L Ed 2d 287, 90 S Ct 1011. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients Cf. Steward Mach. Co. v. Davis, 301 US 548, 584-585, 81 L Ed 1279, 1289, 1290, 57 S Ct 883, 109 ALR 1293; Helvering v. Davis, 301 US 619, 644, 81 L Ed 1307, 1316, 57 S Ct 904, 109 ALR 1319.

Thus, it is respectfully submitted that respondents' equal protection challenge is without merit.

IV.

THIS COURT SHOULD NOT RULE ON RESPONDENTS' STATE LAW CLAIM.

Respondents urge this Court to rule on their claims based on the Illinois Public Aid Code. However, the district court declined to rule on respondents' state law claim, and the court of appeals likewise did not decide the issue. Since the claim has not been previously litigated in the lower courts, this Court should not rule on respondents' state law claim. *Youakim* v. *Miller*, 425 U.S. 231, 47 L. Ed. 2d 701 (1976); *Burns* v. *Alcala*, 420 U.S. 575, 43 L. Ed. 2d 469 (1975).

V.

THE RELIEF APPROVED BY THE COURT OF APPEALS IN *MANDLEY II* AGAINST THE STATE PETITIONERS IS IMPROPER.

In attempting to uphold the relief approved in *Mandley II*, respondents claim that a passage from a document in the Record demonstrates that Illinois continues to participate in the § 406(e) emergency assistance program (br., 47-48). However, the very next paragraph in that document totally contradicts respondents' theory. As part of a status report on the *Mandley* litigation which petitioners filed with the Illinois Legislative Advisory Committee on Public Aid, various courses of action were suggested in light of the *Mandley I* decision. One such alternative was to:

> C. Eliminate 606(e) Program and Create a Program for Meeting Emergent Burnout Cases to be Funded Under Section 602 and Section 603.

> *This is the alternative recommended by the Department.* IDPA proposes to create a special need item (for which it would apply to the Federal Government for reimbursement at the usual 50% rate) as part of the regular AFDC program. Such a program would not cost the Department significantly more than the present program as the only increase in expenditures would be for people who were burned out more than once in a 12-month period. (Payments for two emergencies to the same receiving unit within a 12-month period are not reimbursable under the Section 606(e) provisions.) Should for some reason the Federal Government protest the creation of such a special need item, the situation would have to be reevaluated. At the present time we believe the Federal Government would approve funding such a special need program. (A. 75, emphasis added).

In fact, the Department chose this alternative, and it created an even broader program than was described. The language emphasized by respondents merely reflected the prevailing attitude that some type of special assistance was necessary in Illinois. However, the document cannot be fairly read as demonstrating that Illinois still participates in a § 406(e) emergency assistance program.

Furthermore, as noted by petitioners in their Motion to Alter or Amend Judgment filed in the district court,[4] the

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4. The proposed final judgment order eventually approved by the seventh circuit was filed in the district court on November 26, 1975 (A. 46). That order dealt with the requirements of § 406(e) and of state plans implementing that subsection. On December 1, 1975, state petitioners filed a motion to dismiss in the district court on the ground that Illinois would no longer operate a § 406(e) emergency assistance program (A. 59). In their objections filed in the district court on January 21, 1976, petitioners objected to

provision of the order requiring Illinois to provide emergency assistance within twenty-four hours of a request for aid will lead to serious abuses in the program. Such a stringent time limitation is simply not required either by the Social Security Act or HEW regulations, and the requirement by far exceeds that which is necessary to properly effectuate the emergency assistance program, should Illinois opt to provide a § 406(e) plan.

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the scope of relief ordered in paragraph C (which set forth the time limitations in question) on the ground that Illinois would no longer participate in the emergency assistance program (A. 100). Given the State's decision, more elaborate objections were simply not necessary at that time. Furthermore, since the issue in *Mandley II* concerned the validity of Illinois' new special assistance program, it is unreasonable to assume, as respondents now do, that objections to the proposed order should have been raised in *Mandley II*. After the seventh circuit, acting *sua sponte*, approved the proposed final judgment order, petitioners filed their motion in the district court. In view of the circumstances, petitioners have not waived their objections to the order. *Lawn* v. *United States*, 355 U.S. 339, 2 L. Ed. 2d 321 (1958), which presents a different factual situation, is clearly distinguishable.

CONCLUSION

For the foregoing reasons, Arthur F. Quern, Director of the Illinois Department of Public Aid, et al., state petitioners, respectfully urge this Honorable Court to reverse the order entered by the court of appeals on November 23, 1976, and to affirm the order entered by the district court on July 12, 1976 dismissing the cause as moot.

Respectfully submitted,

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